CHAPTER V.

Magisterial Work.

(The sections quoted, except when otherwise stated, refer to the Criminal Procedure Code.)

This has two aspects: (1) the cases which you try yourself and (2) the supervision which you, as Sub-Divisional Magistrate, have to exercise over Subordinate Magistrates in their criminal work.

To deal with the former first, certain books of reference must be always with you while dealing with magisterial matters, especially—

(1) The Indian Penal Code,

(2) The Criminal Procedure Code,

(3) The Indian Evidence Act,

(4) Circular Orders issued by the High Court of Bombay for the guidance of Criminal Courts.

Receipt of complaint.

The initial step in your magisterial work is the receipt either of a police report or of a complaint, alleging commission of an offence. A Police Report or a complaint from a Government officer will be taken up for trial as a matter of course. But the entertaining of a complaint from a private individual is governed by Section 200 seq. of the Criminal Procedure Code.*

*Criminal Procedure Code, Act V of 1898.

(*Sections 200–203.*)

Examination of complainant.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate.

Provided as follows :—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

(*aa*) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and (where the complaint is made in writing) need not be reduced to writing; but the Magistrate may, if he thinks fit before the matter of the complaint is brought before him, require it to be reduced to writing;

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognizance of the case.

201. (*1*) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(*2*) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Postponement for issue of process.

202. (*1*) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192 may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

(Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.)

[(*2*) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police station, except that he shall not have power to arrest without warrant.]

[(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.]

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Dismissal of complaint.

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, [after considering the statement on oath (if any) of the complainant and the result of (the investigation) or inquiry, (if any) under section 202]; there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing.

On receiving a complaint you will have to examine the complainant on oath, and do not be misled into the idea that an endorsement that " I, A.B., state that the above is true " followed by the complainant's thumb mark and your signature is in any way compliance with Section 200.

It is necessary by yourself examining the complainant to elucidate whether, on the facts which he has presented, any offence has been committed, and if so, what.

" A complaint is too often accepted for trial or referred to the Police when a few well-directed and searching questions might have cleared the matter up. Especially should the practice be kept under check of sending non-cognizable cases to the Police for enquiry, for often it is playing into the hands of complainants who only want to worry their opponents."

For instance, a surly and able-bodied villager may bring up a complaint under the latter part of Section 506 Indian Penal Code " Criminal intimidation by a threat to cause death ". Some knowledge of village life and a few questions will perhaps elicit that the accused does not bear a bad character, that he has never been convicted, nor is he suspected of having caused

the death of any one in the past, nor is complainant actually anticipating being murdered, and that the accused and the complainant *did* have a dispute over the former's calf getting into the latter's field. And it would soon be apparent that one party, if not both, lost his temper and slanged the other. Having regard to conditions of village life and the nature of village abuse, this cannot seriously be considered as criminal intimidation. If it is any offence, it is abuse or petty assault, and the complaint can be disposed of by being dismissed immediately, under Section 203 as falling under Section 95, Indian Penal Code, being an act causing slight harm.

But if the complaint be hastily accepted and transferred immediately under Section 192 to the Aval-Karkun and Magistrate, Third Class, of the Taluka, the probability is that the Magistrate will not realise that under Section 200 proviso (*a*) he can —and should— examine the complainant on oath, and he will be afraid to dismiss under Section 203 a complaint that has been transferred to him by the Sub-Divisional Magistrate. A regular case will, therefore, be begun and heard by the Aval-Karkun at spasmodic intervals, amid the stress of taluka office business; 10 witnesses will be called each day; only one will be examined and the rest will be sent back for a week hence, and so on; pleaders will be engaged on both sides; and eventually the accused will be acquitted or fined Rs. 5, the case having cost several hundreds of rupees in waste of time, pleader's fees, witness bhatta and the like. And, to conclude with the lowest reasons for performing your own duty, the case, when it comes back to you on appeal, will waste 2 or 3 hours of your time in struggling through

an unwieldly mass of evidence and unintelligible statements, and listening to long-winded pleaders.

All this should have been avoided at first by putting intelligent questions to the complainant.

(Of course a complaint under Section 506, Indian Penal Code, second part, could not be tried by a third class magistrate, but that such delays and waste of time should come from a complaint under the first part of Section 506, would make it even more deplorable.)

It also happens that a complaint on examination may disclose no ground for *criminal* proceedings. Unfortunately efforts are often made by persons with civil grievances to get these before the Criminal Courts, either to bring pressure to bear on their opponents, or to avoid the lengthy proceedings of the Civil Courts. Such complaints should always be regarded with suspicion when filed after civil proceedings have been begun or threatened, and in a proper case should be adjourned till the Civil proceedings have been finished.

Again some complaints can be settled merely by the examination of, and a talk with, the complainant. Knowledge of local customs is of use. An old woman once complained that, on the day before, her son-in-law had threatened to kill her and had beaten her, etc., etc. She was asked if the day on which the affair took place was not "Shimga", on which it was the custom among certain classes to use bad language towards one's relatives and friends. Thereupon she grinned cheerfully, said "yes", and no more was heard of criminal proceedings. If the case had been,

taken up or transferred to a Magistrate, by the time it came for trial, everyone would have forgotten the significance of the date of the offence, and the case might have lingered for months before it was finally decided.

When taking action under Section 200, Criminal Procedure Code, Proviso (*a*), to transfer a case, or under Section 201 to return a complaint for presentation to the proper court, or under Section 202 to direct an enquiry by a Magistrate or by the Police, or under Section 203 to dismiss a complaint, always state the section under which you make the order, as this may save future legal complications. In acting under Sections 202 and 203 do not forget to record your reasons.

Disposal of cases.

The Master of the Rolls, Sir George Jessel, is said to have remarked regarding the English Bench, that the difference between a good and a bad Judge is never more than 5 per cent., and that the only thing that matters is "dispatch". This can hardly be applied to the Magistracy in India, when there are very obvious differences between good and bad Magistrates, but the importance of dispatch is here even greater. The Criminal Procedure Code and the subtlety of the legal intellect provide a larger number of expedients by which parties and their advisers can delay dispatch in criminal cases. It is possible, however, for a Magistrate to do much to minimise these delays.

Avoidance of Delay.

In the first place fix as the time for attendance of the parties and witnesses one at which you yourself will be ready to take up the case, and do not call for that day more witnesses than you are likely to be able to hear. Do not leave this to your Magisterial clerk, who, unless

continually supervised, will undoubtedly call up more witnesses than there is any chance of your taking up that day.

"53. Magistrates should remember that priority should as a rule be given to Criminal work over other work, and that every effort should be made to reduce as far as possible the hardship to parties and witnesses which the proceedings entail. The hearing of a case should usually go on from day to day excepting Sundays and authorised holidays. Adjournments when necessary should be as short as the circumstances will permit. The Magistrate should always sit punctually at the appointed hour so as not to keep people waiting, and when on tour should take the utmost care to let parties and witnesses know the place and hour fixed for their appearance, and do everything in his power to avoid putting them to any unnecessary inconvenience."

(Paragraph 53, pages 40–41, Chapter III, of Circular Orders issued by the High Court of Bombay for the guidance of the Criminal Courts, 1931.)

"54. The following extract from the Circular, Home Department, No. 3650-D, dated the 24th September 1923, to the District Magistrates in the Presidency is republished for general information :—

" * * * * *

"2. It will be seen from the instances given by the Inspector General, which will be supported by your own experience, that the trials of cases are not held *de die in diem*, as recommended by the High Court. Unnecessary, prolonged and frequent adjournments defeat the ends of justice, are a source

of oppression to the poorer parties, inflict unnecessary harassment on the witnesses and Police, and are a source of great and needless expense in the payment of bhatta. The High Court had laid down in paragraph 53, Chapter III, of its Circular Orders relating to Criminal Courts that 'the hearing of a case should usually go on from day to day excepting Sundays and authorised holidays'. If the practice of conducting cases *de die in diem* is strictly followed, exceptions being allowed only where an insistence on it would defeat the ends of justice, many of the present abuses would disappear. Magistrates should therefore be directed to explain in their diaries all those occasions on which they have failed to comply with this practice, and you should very carefully scrutinise these explanations. You should in particular remember that postponements merely for the convenience of pleaders are without justification, being against the interests of the public.

"3. The High Court Circular quoted above was intended 'to reduce as far as possible the hardship to parties and witnesses which the proceedings entail'. Your attention is particularly drawn to paragraph 47 of the Circular :—

> 'To avoid the needless harassment of witnesses by detention for cross-examination after the charge has been framed, Magistrates will usually find it convenient not to wait for the completion of the evidence for the prosecution, but to frame the charge as permitted by Section 254 at an earlier stage, as soon as from the examination of the prosecution or complainant or otherwise it is apparent that there is a *prima facie* case.'

"You should note the words 'as soon as'. It is within your knowledge that often after the examination-in-chief, cross-examination is deferred till all witnesses are ready for it. For this they are brought back to the Court on different dates. Thereafter the charge is framed, and once again they are brought back for further cross-examination. You should pay special attention to the suppression of this practice which is in direct conflict with the principles underlying the Circulars of the High Court....."

(Paragraph 54, pages 41–42, Chapter III, of the Circular Orders issued by the High Court of Bombay for the guidance of the Criminal Courts, 1931.)

Most of the cases which you will have to try will be "Warrant" cases; therefore familiarise yourself thoroughly with Chapter XXI of the Criminal Procedure Code. Note particularly that, as indicated in the High Court Circular quoted above, under Section 254 you can frame the charge against an accused as soon as you are of opinion that there is ground for presuming that the accused has committed an offence.

Cross-examination.

Under Section 256 (*1*) the accused, after hearing the charge, is given till the commencement of the next hearing of the case to say whether he wishes to cross-examine any witness that may have been examined for prosecution. But this section also provides that, if the Magistrate so thinks fit and records reasons in writing, the accused may be called on at once to state which witness or witnesses he wants to cross-examine, and that these witnesses should be recalled and after cross-examination and re-examination shall be discharged at once.

An accused is often not averse to giving as much trouble as possible to those who testify against him, and therefore he tries to get them called back from their homes for cross-examination on another day. Again an inexperienced lawyer, instead of having his defence ready, is sometimes inclined to hope like Mr. Micawber that something helpful to his side may turn up, if he postpone cross-examination of the prosecution witnesses. Neither reason for postponement is adequate. It is probably very seldom that in a magisterial case any injustice will be done by insisting on cross-examination immediately after framing the charge, especially as it is always possible under Section 257 for the accused to apply to the Magistrate to recall a witness for cross-examination. But note the proviso to this section, that a witness cross-examined after the charge will not be recalled unless the Magistrate is satisfied that it is *necessary* for the purposes of justice. Action under Section 257 (2) requiring that such a witness's expenses be deposited in Court is a further check against unnecessary recall.

Application for Transfer.

Section 526 (B) provides that either party may apply for a transfer of a case to another Court and that the Court *shall* then adjourn the case for such period as will afford sufficient time for the application to be made and order obtained thereon. It is regrettable, but this section is sometimes taken advantage of merely to protract proceedings, when the party applying has really no valid ground for requesting a transfer. It may therefore on occasions be desirable that the Magistrate should require under this section the execution of a bond that the applicant will make an application within a reasonable time fixed by the

Magistrate, and he should fix a reasonable time for the purpose.

Some Magistrates seem to think that adjournments which do not involve recalling witnesses—e.g. for argument whether a charge should be framed or for argument after conclusion of the evidence,—ought to be always given. But such adjournments involve the attendance of the accused, and if he is not on bail, his detention in jail, and should be avoided as far as possible. A pleader should be prepared to argue his case as soon as the evidence is closed.

Nor is there any excuse in an ordinary case to adjourn a case for a week to write a judgment. The quicker the judgment is written, the fresher in the Magistrate's mind will be the material on which it is based.

Legal representation.

Every accused person has a right to be represented by a pleader (*see* Section 340) but this does not give an accused or a complainant the right to the adjournment of a case until he secures the services of a pleader. So long as a party has had reasonable notice of the date, there is normally now, in view of the crowded state of the bar, no reason why he should not have arranged legal representation before the case is called, and adjournments for him to secure a pleader should be refused.

Equally adjournments merely to suit the convenience of pleaders who may have other engagements, should not be given if they involve further delay or the recall of any witnesses or of the other party.

The Bar.

Some delay is unfortunately due to the inefficiency of the mofussil Bar, and this is more difficult to

deal with. Pleaders will be found cross-examining and re-examining at inordinate length, very largely with enquiries on subjects irrelevant to the case. The reasons for this are: partly perhaps the absence of the prolonged legal training which the English Barrister undergoes: partly perhaps the competition at the local Bar, so that the pleader feels that the more he may cross-examine the witnesses, the more he will seem to give his client his money's worth, and so the more briefs he will be likely to receive: partly perhaps the inefficiency of some of the Subordinate Magistrates, who seem to judge the credibility of a fact by its repetitions and the incredibility of a witness by the number of futile minor discrepancies that irrelevant cross-examination can extract: partly perhaps some Subordinate Magistrates' lack of magisterial experience and of legal training which makes them nervous of opposing the Bar and of restricting its cross-examination to relevant questions.

Some of these causes are beyond the power of a Magistrate to remedy, but much can be done to guide the inexperienced pleader on the lines he should follow. Do not allow insulting questions to be put to a witness unless the pleader will explain the relevance and vouch for the information on which they are based. You can indicate tactfully that a certain line of argument which the pleader wants to follow seems to you irrelevant, and even if relevant, not to be of much value to his case. Never hesitate to ask a pleader to explain to you the relevancy of any question he may put in examination-in-chief and, if you decide it is irrelevant, then disallow it. Irrelevant cross-examination is more difficult to deal with, since disclosure of the relevance of a question

may put a lying witness on his guard. As a Magistrate you should never argue with a pleader, but hear what he has to say as patiently as possible and, if necessary, call on the other side for its view, and then definitely allow or disallow the question or line of argument in dispute.

A Magistrate can do much to help the young pleader to get knowledge of how to conduct cases, and you should remember that many of them are not only inexperienced, but have obtained their Pleader's Sanads at a financial cost they can ill afford, only to find that the Bar is over-crowded and that they have precious little chance of ever making a decent living. Courtesy and sympathy from Magistrate will help them to learn their profession. On the other hand discourtesy and deliberate obstruction from the Bar should be severely reprobated.

Commentaries and Rulings.

A Magistrate will be well advised to stick closely to the text of the various Acts and Codes with which he has to deal, without being led into dalliance with their fascinating annotations and commentaries. Rulings of the Bombay High Court are of course binding on all Magistrates within its jurisdiction. When, however, a ruling does not seem entirely applicable to the circumstances to which a pleader seeks to apply it, you should ask to be shown the report of the case in the Bombay Law Reports. It is sometimes found that pleaders quote as authority decisions, which, on examination, do not so aptly apply to the question under discussion.

Proceedings

During a trial the Magistrate has to keep a form of proceedings laid down by High Court Circular page 37, and particularly remark the foot-note which enjoins

that all the entries, from the time that witnesses begin to be heard, must be made in the Magistrate's own handwriting. This sounds a small point, but you will find that doing so is definitely an aid to keeping your control of the progress of the case.

Remember that it is a Magistrate's duty to see that as far as possible justice is done, and not merely to decide cases by what is put forward on either side by the parties or their pleaders. So, when either party is not represented by a pleader, you have yourself perforce to adopt the role of a pleader for the unrepresented. There are now so many pleaders that it is not likely parties will often be unrepresented in your Court, but even though both sides be represented, it is none the less your business to see that the facts on both sides are properly put forward and considered. Magistrate's duty.

Under Section 342 a Magistrate *can* at any stage and, after the prosecution closes, *must* question the accused. Mere perfunctory questions as to whether he has anything to say in the light of the evidence against him, do not comply with this section. It is your duty to see that the accused has every opportunity to explain personally any circumstances which seem to tell against him, or to confirm those which seem in his favour.

"In the examination of witnesses do not be led into the error of laying too much stress on discrepancies. Among the average witnesses of this country—inaccurate in observing, loose and rambling in speech—entire consistency with themselves and with one another would be a positive proof of concocted perjury. A much more significant point than ordinary Witnesses.

contradictions is whether or not the opposite party can suggest any reason why a witness should be regarded with suspicion."

"In most important cases Police officers will be engaged. The Magistrates should treat them, and insist on others treating them, with the consideration due to their rank. They may be proved to be mistaken or carelessness or corrupt or cruel, but like everyone else, they are entitled meanwhile to a presumption in their favour. As guardians of the public peace and safety, they should receive fitting assistance and protection and respect, so long as they do their often difficult duty, and unsparing correction when they fail."

Section 363 provides for recording your remarks on the demeanour of a witness. Such remarks recorded below the witness's deposition in some detail will be of assistance to an Appeal Court in assessing the credibility of the witness, and should not be omitted when some brazen liar or nervous perjurer appears in your court.

A point which sometimes arises is whether a respectable witness should be allowed a chair when giving evidence. This is dealt with on page 56 of the High Court Circular, paragraph 85.

Judgment. Section 367 gives directions regarding the form of judgments. In cases under the Indian Penal Code, it is useful to look up from an annotated code what are the factors which have to be proved to constitute the offence charged, and in your judgment to state these very clearly, as they are the points for decision

in the case, i.e., these elements of the offence must be proved before the accused can be held to be guilty under the Section. And before you decide that the accused is guilty, make sure that you have adequate reasons to answer each point in the affirmative.

A Magistrate's judgment must not only be right, but it must so expressed that it will convince an appeal Court that the Magistrate has reached the right decision, and has the right reasons for that decision. You must therefore leave no doubt as to what your opinion is about each point, and as to the facts which led you to hold that opinion.

You will assist both your own thinking, and the appeal Court, if you write your judgment in fairly short and numbered paragraphs, and, if, in mentioning a series of reasons or facts, you sub-number these also. The typical old-fashioned Third Class Magistrate's judgment which consists of a dozen or more closely written pages, recapitulating *in extenso* the evidence of all the witnesses, without giving any hint of the Magistrate's own views of the credibility or otherwise either of the witnesses or of the facts, and ending with "therefore I convict the accused", must be avoided at all costs.

Sentences.

Never fall into the illogical error of giving a man whom you have convicted, a light sentence, because you are not *quite* sure that he is really guilty.

What sentences should be imposed for any offence is sometimes a problem to the inexperienced Magistrate but no general rule can be laid down. The sentence must obviously depend on the individual case, the nature

of the offence, its prevalence, its consequence to public safety, the age, status, sex, etc., etc., of the criminal. To some extent a guide can be found as to the relative sentences which should be inflicted, in the maximum sentences prescribed for the offence in the Indian Penal Code. But if you have succeeded a senior officer, it is worth while running through some of his cases or his magisterial returns, and seeing what he, and the Appeal Court, considered suitable sentences for various offences.

Various.

Section 250 enjoins that when an accused is acquitted and the Magistrate considers that the accusation was false and either frivolous or vexatious, he may call upon the complainant to show cause why he should not pay compensation to the accused. This power will probably not be much exercised by a Sub-Divisional Magistrate as a large number of his cases are sent up by the Police, but occasionally in other cases it is very desirable to emphasize that the process of the law is not meant for the vexatious harassment of individuals. More frequent use of this section by Subordinate Magistrates who deal largely with private complaints, would undoubtedly be beneficial to the administration of justice in reducing the number of unnecessary cases.

In non-cognizable cases which end in conviction, the Magistrate should, as laid down in Section 544 (*a*) collect from the accused certain expenses paid originally by the complainant.

The use of Section 545 which provides for the payment of expenses or compensation to a complainant out of the money recovered as fine may reasonably be used more freely than many Magistrates use it.

Subordinate Magistracy.

To turn now to the control which, you as a Sub-Divisional Magistrate will have to exercise over your Subordinate Magistrates of the Second and Third Classes, you will receive from these the various returns prescribed under High Court Circular, Chapter XIII. You will also check their work when examining the Mamlatdar's offices, and, when you have been invested with appellate powers, appeals from their decisions will come before you. There is thus ample opportunity for judging their work.

Magisterial Returns.

Their criminal returns you will examine monthly under High Court Circular note (*b*), page 148, and in examining these returns insist that they are prepared in accordance with the High Court Orders. There is a tendency for magisterial clerks to fill the forms up with vain repetitions of the definitions of the offences, and to neglect to state the actual facts, and Subordinate Magistrates are inclined not to bother to supervise the filling up of these returns. In your examination the following are some points to note :—

(1) The forms must be legibly written as neither you, nor the District Magistrate, nor the High Court have the time to waste struggling with badly written manuscript. If illegible, return the form at once to be written out properly.

(2) Was the accused in custody, and if so, for how long, both before and after the case was taken up. Magistrates are sometimes entirely oblivious of the hardship of keeping an accused in jail for weeks or months.

(3) The length of time which the case has taken from beginning to decision. This is where you will

probably find your Subordinate Magistrates are least competent. The suggestions which have been made in the comments on conduct of cases in your own court [*see* page 49] to ensure "dispatch" must be insisted on in the courts of your Second and Third Class Magistrates.

(4) The Sentence.—Some Magistrates have idiosyncrasies which make them give either excessively light or excessively heavy sentences for various offences. More or less a general level of punishment is desirable. Especially check any tendency to short sentences of imprisonment.

(5) Whether the Magistrates utilise Section 250 to deal with false and frivolous complaints, and whether they use Section 545 to award compensation out of the fines. Both these salutary provisions Subordinate Magistrates seem to forget.

(6) Reasons for adjournments.—Do not hesitate to point out to a Magistrate that such and such reasons he has given for postponing a case are inadequate.

If you think that a Magistrate has gone seriously wrong, you should call for the papers under Section 435 (*1*) and, if you consider necessary, release the accused on bail. Thereafter report the case to the District Magistrate under Section 435 (*2*). (All Sub-Divisional Magistrates in the Bombay Presidency have been empowered under this Section by Government Notification, Home Department, No. 1011/2, dated 18th January 1927.)

Short sentences.

Above all, in checking the Magistrate's returns watch the sentences carefully, as, despite continual adjurations

by Government some Magistrates still inflict short sentences. Obviously, under ordinary circumstances, a short sentence is of no use at all, for while it is not long enough to reclaim the hardened criminal, it brings the first offender into contact in jail with undesirable characters from whom he will certainly learn habits of crime.

So when on perusing a Magistrate's return you find a short sentence, always draw the District Magistrate's attention to it so that he can if he thinks fit act under Section 435 (2) and release the prisoner on bail under Section 438.

What sentence is a short one, has not been defined, but perhaps a working rule may be that any sentence under two months imprisonment needs considerable justification, and that any sentence of imprisonment under a month makes one doubt the fitness of the Magistrate to hold magisterial powers.

So, when on perusing a Magistrate's returns, you find a short sentence, always consider whether you should not take action under Section 435 (1) and release the prisoner on bail, pending the District Magistrate's dealing with the case.

Many subordinate Magistrates do not make sufficient use of Section 562 for first offenders, nor of Section 106 regarding security for keeping the peace on conviction. Magistrates not empowered under these sections should send such cases to you under Section 562 and Section 349.

Sentences of fine must be as far as possible proportionate to the ability of the prisoner to pay and

all efforts to recover the fine must be made. Section 388, Criminal Procedure Code, gives a Magistrate discretion to allow time for payment.

"Sufficient security should be taken that the accused does not run away. If a Subordinate Magistrate is so careless as to allow a convict time to pay the fine without taking security and he absconds, you will be justified in taking disciplinary action against the Magistrate himself. The case will come to your notice, because he will ask you to write off the fine."

(Junior Collector's Handbook, p. 78.)

Discussion with Magistrate.

When examining a Mamlatdar's office, discuss with the Magistrate any points which your office have put up in the inspection memo on magisterial matters. But in addition to this, discuss personally with the Magistrate, not in public in the office but in your camp, the judgments in any case where you think he has gone wrong or has written judgments in unintelligible fashion. And, though in appeal the conclusions and inferences of Third Class Magistrates may be sometimes rejected with comments, their judgments are seldom criticised from the point of view of form, lucidity, and arrangement; and unless a judgment is discussed in detail, it is difficult for a young Third Class Magistrate to realise why his painstaking précis and essay of a dozen pages is far less useful, and less likely to be upheld in appeal, than a brief and properly digested judgment of a page and a half. Explain to him the necessity for fully stating the points for decision and for giving the reasons why he reaches a decision on each point, and the imperative necessity of putting the whole in a comprehensible and intelligible form.

Sometimes it is necessary to point out to a Magistrate the delays in his court, and, e.g., that postponement of a simple case for a week "to write judgment", is liable to give cause for the ill natured to wonder if the Magistrate was waiting to see which side would pay most, and that, though of course in his case this is absurd, he would be wise to be more expeditious in future.

If, after continued advice and warning, a bad Magistrate shows no improvement in his work, it is better to ask the Collector to remove him to some less important charge where his lack of intelligence will not be such a hardship on the public as are his judgments. In this connection note para. 4 on page 42 of the High Court Circular which instructs you to make particular mention in reporting on a Magistrate of the methods of despatch given in High Court Circular, p. 40, para. 53, noted above at p. 50.

MO-III Bk H 1010—6